

**REMARKS**

Claims 45-62 and 64-93 are pending in the present application. In the last Office Action, the Examiner rejects claims 45-62 and 67-93. Claims 64-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The same objection over claims 64-66 were made in the Examiner's previous office action of September 25, 2003. That is, the Examiner previously indicated that claims 64-66 contain allowable subject matter and would be allowable if rewritten in independent form. Accordingly, by this amendment, Applicant amends independent claim 49 to recite its originally filed language while also incorporating all of the limitations of objected claim 64, now canceled. Therefore, independent claim 49 is now in condition for allowance, along with all claims depending therefrom.

Claim 64 having been canceled, dependent claim 65 is now amended to change its dependency to independent claim 49. Claims 45-48, 67-69, and 86-91 are also canceled in order to simplify the issues before the Examiner and to expedite prosecution of the application. Such cancellation should not be construed as Applicant's acquiescence to the rejections over these claims. Further, Applicant reserves the right to prosecute the canceled claims in a continuation application.

In addition, Applicant hereby amends claim 58 to depend from claim 49 and to recite that the device is formed at least in part of polyethylene terephthalate. Support for this limitation can be found at paragraph no. [042]. Claim 82 is amended to recite that the attachment means comprise at least one suture. Claim 93 is also amended to recite that the material includes at least in part a growth factor. These minor

amendments are made in order to better claim the present invention, and are fully supported by Applicant's specification.

By this amendment, Applicant also submits new claims 94-101 for the Examiner's consideration. New claims 94-101 further define the bladder of independent claim 49, and support for these new limitations can be found at paragraph number [051] to paragraph number [055]. Accordingly, no new matter is added by these amendments.

Finally, Applicant respectfully requests reconsideration in view of the following remarks.

### **35 U.S.C. §112 Rejections**

The Examiner rejects claims 45-48, 58, 60, 67-69, 86, and 87 under 35 U.S.C. §112, 1<sup>st</sup> paragraph, as failing to comply with the written description requirement. Inasmuch as claims 45, 67-69, and 86-87 are now canceled, these rejections are rendered moot. Accordingly, Applicant now addresses the remaining rejections of claims 58 and 60.

The Examiner rejects claim 58 and 60 as reciting the materials polyethylene and polytetrafluoroethylene, respectively, because the Examiner asserts that the specification does not specifically disclose these materials. The Examiner is kindly asked to refer to paragraph number [042] of the specification, which describe examples of biocompatible or bioresorbable materials well known in the art that are suitable for making the device of the claimed invention. In particular, U.S. Patent No. 4,904,260 to

Ray et al., which is specifically referenced in paragraph number [042], describes at col. 4, lines 59-67 that polytetrafluoroethylene (PTFE) and polyethylene terephthalate (PET) are suitable materials for forming a bladder device for use in a prosthetic disc device. Because the Ray et al. patent is incorporated in its entirety by reference, and since Applicant has disclosed that suitable examples of materials for the claimed invention can be found in the Ray et al. patent, Applicant believes that support can clearly be found for the recitation of “polyethylene terephthalate” in amended claim 58 and “polytetrafluoroethylene” in claim 60. The Examiner is respectfully asked to reconsider and withdraw these rejections and allow the claims to issue.

### **Conclusion**

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 49-62, 65, 66, 70-85, and 92-101 in condition for allowance. Applicant submits that the proposed amendments of claims 49, 65, 82 and 93, and the cancellation of claims 45-48, 64, 67-69, and 86-91 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art

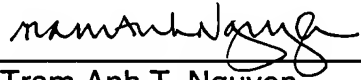
references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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